

REMARKS

This is in response to the Office Action mailed December 29, 2006. Claims 1 and 24 have been amended to fix typographical errors and remove redundancy. No new matter is added.

Independent claim 1 and its dependent claims 2-12, 14-15, 20, 22-23, and 26-27, and independent claim 24 and its dependent claim 25, are currently pending and at issue. Claims 13, 16-19, 21 and 28 have been withdrawn as being based on non-elected species.

Objection relating to the Abstract

The Examiner has objected to the Abstract as not describing the claimed article of manufacture, but rather methods of use. The Examiner states that the Applicants appear to have inadvertently overlooked the objection in the response of 4/4/06. As discussed with the Examiner on June 19, 2007, Applicants note that in the amendment filed October 18, 2006, the abstract was amended to comply with the Examiner's objection. Applicants respectfully request this objection be withdrawn.

Claim Rejections - 35 U.S.C. §112

The Examiner has rejected claims 1-12, 14, 15 and 20-27 under U.S.C. § 112, first paragraph. Applicants traverse this rejection because the present specification contains a written description of the invention, and of the manner and process of using it, in full, clear, concise, and exact terms as to enable any person skilled in the art to use the invention as set forth in the claims for men as well as women. For example, at paragraph 76 of the present specification, after the data relating to women in Table 4 is discussed, the specification further recites that "[s]imilarly, the regression model for males demonstrated an inverse relationship between calcium and dairy intakes and body fat..."

Moreover, the Inventors have shown that calcium and/or dairy can be used to induce the metabolic consumption of adipose tissue, induce weight loss, reduce weight gain, increase fat loss, and/or reduce fat gain, e.g., Examples 1 and 2.

Thus, the specification as filed contains sufficient information to reasonably provide enablement of the invention as claimed without undue experimentation.

In addition, the enclosed 132 Declaration of Dr. Michael Zemel, further evidences the enablement of the present claims by showing that a calorie-restricted diet containing dietary calcium and/or dairy, as is claimed and taught by the specification, is effective for increasing the metabolic consumption of adipose tissue, inducing weight loss, reducing weight gain, increasing fat loss, and/or reducing fat gain in both men and women, without limitation as to gender.

As set forth above, the specification, e.g., the dosage amounts listed in Table 4, as applied to men, as per paragraph 76, and Examples 1 and 2, enables any person skilled in art to which it pertains to use the invention commensurate in scope with the claims without undue experimentation.

Based on the above, the Applicants respectfully request that the 112 rejection be withdrawn.

Provisional Double Patenting Rejection

The Examiner has provisionally rejected claims 1-12, 14, 15 and 20-27 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 8-10 of copending Application No. 10/827,801. However, Applicants believe that the listing of "10/827,801" is a typographical mistake since the cited application is not related to the present

application. As discussed with the Examiner on June 19, 2007, the rejection is over Applicant's copending U.S. Pat. Appl. No. 10/827,301. Applicants traverse this rejection.

However, solely to expedite prosecution, a terminal disclaimer will be filed in the other application.

Applicants respectfully request this rejection be withdrawn from this application.

Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. Accordingly, Applicants request that the Examiner issue a Notice of Allowance indicating the allowability of claims 1-12, 14, 15 and 20, 22-27 and that the application be passed to issue. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is hereby invited to telephone the undersigned at the number provided.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

The Commissioner is authorized to charge any deficiency in any patent application processing fees pursuant to 37 CFR §1.17, including extension of time fees pursuant to 37 CFR §1.17(a)-(d), associated with this communication and to credit any excess payment to Deposit Account No. 22-0261.

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Respectfully submitted,

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